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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/016,240	12/10/2001	Marc Feinberg	ETH-1605	4543
27614	7590	04/08/2004	EXAMINER	
RALPH W. SELITTO, JR. C/O MCCARTER & ENGLISH, LLP GATEWAY CENTER FOUR 100 MULBERRY STREET NEWARK, NJ 07102			PICKETT, JOHN G	
			ART UNIT	PAPER NUMBER
			3728	12

DATE MAILED: 04/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/016,240

Applicant(s)

FEINBERG ET AL.

Examiner

Gregory Pickett

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 11-14 and 16-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/10/01 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>8.9.10</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group 1, Species 1 in Paper No. 14 is acknowledged. Claims 1-23 are pending in the application. Claims 11-14 and 16-23 are withdrawn from further consideration as being directed to a non-elected species.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 9, and 10 are rejected under 35 U.S.C. 102(a) as being anticipated by Kalinski et al (US 6,047,826).

The examiner notes that the applicant has not positively recited the products. As such, the interaction between the products is deemed an intended use and the prior art need only be capable of functioning as claimed.

Regarding claim 1, Kalinski et al discloses a package (10) with a first holding means (60) and a second holding means (90). Depending on the products held, Kalinski et al is capable of functioning as claimed by the applicant.

As to claims 2-4, since the products have not been positively recited, the interaction between the products is deemed an intended use, and depending on the products held, Kalinski et al is capable of functioning as claimed by the applicant.

As to claim 5, Kalinski et al discloses tray (20). Tray (20) is relatively flat, which is a shape that inhibits it from rolling.

As to claim 9, Kalinski et al discloses housing (20). Tray (20) is relatively flat, which is a shape that inhibits it from rolling.

As to claim 10, since the products have not been positively recited, the interaction between the products is deemed an intended use, and depending on the products held, Kalinski et al is capable of functioning as claimed by the applicant.

3. Claim 15 is rejected under 35 U.S.C. 102(b) as being anticipated by Discko, Jr. (US 5,199,567).

Discko, Jr., discloses a package (14) for an applicator nozzle tip. Since the nozzle tip and fluid-containing vial have not been positively recited, the interaction between the products is deemed an intended use. Discko, Jr. is capable of holding a nozzle tip at an angle by well (36, see Figure 2). With the nozzle tip at an angle, a fluid-containing vial could be attachable to the nozzle tip without removing the nozzle tip from the package.

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***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kalinski et al in view of Alpern et al (US 4,482,053).

Regarding claim 6, Kalinski et al is designed for use in the medical field where sterilization is a necessity. Kalinski et al discloses the claimed invention except for the tray within a tray arrangement.

Alpern et al discloses a tray within a tray arrangement for use in one ethylene oxide sterilization cycle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the tray of Kalinski et al in a tray within a tray arrangement as taught by Alpern et al in order to sterilize the held articles in one ethylene oxide sterilization cycle.

As to claim 7, Alpern et al discloses means for gripping (grips beside 20, see Figure 5).

As to claim 8, Kalinski et al discloses means for holding (27, 28).

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***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 703-305-8321. The examiner can normally be reached on Mon-Fri, 9:30 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Gregory Pickett  
Examiner  
2 April 2004

  
Mickey Yu  
Supervisory Patent Examiner  
Group 3700